IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.654/2006
Reserved on: 9.5.2008
Decided on.19.5.2008

Mohan Singh. **…Petitioner.**

Versus

H.P. Board of School Education and another. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. yes.

For the petitioner **Ms. Vidushi Sharma, Advocate.**

For the respondents **Mr. Lovneesh Kanwar, Advocate for respondent No.1.**

Mr. Ajay Kumar Dhiman, Advocate for respondent No.2.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner appeared in 10+1 examination conducted by the respondent-Board in the month of March, 2006 under roll No.156285. He appeared in the paper of Physical Education on 24th March, 2006. He submitted his answer-sheet to the concerned Examiner of his Hall at 5.00 P.M. as per the averments made in the petition. He was disqualified for two years by the Standing

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

Committee vide Annexure R-3 and the decision was conveyed to him vide Annexure P-4 dated 30.6.2006.

Ms. Vidushi Sharma, Advocate appearing on behalf of the petitioner had strenuously argued that neither Annexure R-3 nor Annexure P-4 dated 30.6.2006 are sustainable in the eyes of law. She also contended that there is violation of principles of natural justice and her client has not been dealt with in a just and fair manner.

Mr. Lovneesh Kanwar, Advocate appearing on behalf of respondent No.1 had supported the impugned orders. Mr. Kanwar produced the entire record during the course of hearing for the perusal of the Court.

I have heard the learned counsel for the parties and perused the record carefully.

What emerges from the pleadings of the parties is that the petitioner appeared in the examination on 24th March, 2006. An FIR was registered at Police Post, Fatehpur on the basis of the complaint lodged by Centre Superintendent on 24.3.2006 to the effect that the petitioner ran away along with his answer-sheet of the subject of Physical Education. The message to this effect was also sent to respondent-Board by way of fax. The Deputy Superintendent has also sent a communication to the Centre Superintendent on 25th March, 2006 stating therein that when Invigilator Sh. Kulbir Singh was collecting the answer-sheets, the petitioner ran away with his answer-book from room No.2. The entire staff tried to apprehend the petitioner, but could not apprehend him. He was served with a

show cause notice Annexure P-1 dated 5.6.2006. There is no averment whatsoever in this notice that the petitioner ran away with the answer-sheet on 24.3.2006. He was directed to appear before the Standing Committee on 19th June, 2006. It was necessary for the Board to mention precisely what was the charge against the petitioner. He was also asked to fill in a questionnaire Annexure P-2. In this questionnaire there is no column to the effect that the petitioner ran away with his answer sheet on 24.3.2006. Since neither the notice nor the questionnaire served upon the petitioner has stated that the petitioner ran way with the answer sheet, it was impossible for him to defend himself. He appeared before the Standing Committee on 19th June, 2006. His statement was recorded. In his statement dated 19th June, 2006, the petitioner had categorically stated that he had handed over the answer sheet to the Examiner. He also produced one witness, namely, Sh. Soni Kumar, who was sitting in the Examination Hall next to him. His statement was not recorded by the Committee. The only explanation why the statement of Sh. Soni Kumar was not recorded given by the respondent-Board in its reply is that the Unfair Means Committee in its wisdom thought that it was not required. This amounts to serious procedural irregularity. Once the witness was present before the Committee, his statement ought to have been recorded.

Now, the Court has to advert to the manner in which the decision has been taken by the Unfair Means Committee. The Court has perused the entire record. The Committee has made the following observations:

> **"As per the report received, the provisions of Chapter 10 Clause 10.2.12 of Examination Regulations are attracted in this case. The Committee is unanimously deciding that the accused be disqualified for two years."**

In the entire record, there is no copy of any inquiry report as mentioned in Annexure R-3. The statement of the petitioner has not been discussed at all. Once the petitioner had given the explanation that he had submitted the copy of the answer book on 24.3.2006, it was required to be looked into by the Committee and it could not brush aside the same.

What emerges from the above discussion is that there was violation of principle of natural justice since the petitioner has not been disclosed of the precise charge levelled against him. If the case of the Board is that the petitioner ran away with the answer sheet, the same should have been mentioned in Annexures P-1 and P-2. The statement of the witness Sh. Soni Kumar who was present before the Committee should have been recorded in the interest of justice. The statement made by the petitioner on 19th June, 2006 was required to be taken into consideration by the Committee.

The decision i.e. Annexure R-3 is not a speaking order. It is settled law by now that any order even though administrative having civil consequences must be a reasoned order, more particularly, when the same is to be assailed before an appropriate Court. If no reasons are assigned, it will be impossible for the Courts to analyze whether there is due application of mind by the concerned authorities or not. A speaking/reasoned order also pre-supposes

that there is due application of mind. The decision to be taken by the authorities, including the Unfair Means Committee, should take into consideration the entire evidence led by the parties after affording reasonable opportunity to the Student to put across his version. In the present case all these aspects have not been taken into consideration.

Their Lordships of the Hon'ble Supreme Court in ***Board of Technical Education, U.P. and others versus Dhanwantri Kumar and others***, 1991, SC 271 while upholding the order of Allahabad High Court has held as under:

> **"We have perused the records and heard counsel on both sides. On the peculiar facts and in the special circumstances of these cases, we are of the view that the High Court was justified in coming to the conclusion, which it did, that the notices served on the students were so vague and imprecise that they could not effectively defend themselves in the inquiry."**

Consequently, the writ petition is allowed. Annexures R-3 and P-4 dated 30.6.2006 are quashed and set aside. The petitioner is held entitled to costs which are quantified at Rs. 5000/-.

(Rajiv Sharma), Judge

May 19, 2008
Awasthi